IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 183 OF 2004

Shri Suresh Bhimrao Chavan..... Petitioner.

Versus

The State of Maharashtra & Ors..... Respondents.

Mr. N.V.Bandiwadekar for the Petitioner.

Mr. R.D.Rane, Govt.Pleader for Respondent Nos.1 & 2.

Mr. Shrishail Sakhare for Respondent Nos.3 and 4.

CORAM : A. P. SHAH &

S. U. KAMDAR, JJ.

DATED : 23RD SEPTEMBER, 2004.

P.C.:

Rule.

2. Learned Counsel for Respondents waive service. By consent, rule is made returnable and heard finally forthwith.

3. The Petitioner is a permanent employee of the Respondent No.4, Primary School. He has been working

as an Assistant Teacher since 1992. The Respondent No.4 School is being conducted by the Respondent No.3 Society. In March 2003 the Petitioner was entrusted the work of supervision of March 2003 S.S.C. Board Examination and the Petitioner was assigned the duty at Tasgaon Examination centre from 5th March, 2003 to 19th March, 2003. It appears that one student by name Mahadev Brahmadev Hulwan allegedly indulged in malpractice in the said examination and complaints were made to the authorities including the S.S.C. Board. On 1st December, 2003, an offence came to be registered at Tasgaon Police Station vide C.R. No. 58 of 2003 under Sections 7 and 8 of the Maharashtra Prevention of Malpractice at Board Examinations Act, 1982 against eleven persons including the Petitioner. The Petitioner along with other accused came to be arrested on 10th December, 2003 and was released on bail on 15th December, 2003. The police has investigated C.R. No.58 of 2003 and made a report to the Judicial Magistrate, First Class, Tasgaon stating that there is no proof against any of the accused and, therefore, recommended release of the accused under Section 169 of the Criminal Procedure Code. Pursuant to this report the learned Magistrate has dropped the proceedings against the accused vide order dated 24th

June, 2004.

4. In the meantime, the management of the School sought guidance from the Education Officer (Secondary), Zilla Parishad, Sangli in view of the arrest of the Petitioner for unfair practice and malpractice on the basis of C.R. No. 58/2003. The Education Officer was requested to give guidance for intiation of action of suspension of the teacher. By letter dated 13th January, 2004 the Education Officer advised that the Petitioner was in custody for the period exceeding 48 hours and therefore an action as contemplated under Rule 33(5) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 be taken. Pursuant to the said letter of the Education Officer the Managing Committee of the Society put the Petitioner on suspension vide order dated 24th January, 2004. The legality and propriety of the said suspension order is questioned in the present petition under Article 226 of the Constitution of India.

5. Mr. Bandiwadekar, learned Counsel appearing for the Petitioner, urged that under Rule 33(5) the period of suspension can only be for such period (beyond 48

hours) as the employee was in custody and the suspension of the employee cannot be for a period beyond the detention in judicial custody in the present case. In other words, the suspension even if validly made could not be operated beyond 15th December, 2003. The second submission of Mr. Bandiwadekar is that the criminal proceedings which were filed against the Petitioner have been dropped and the Petitioner along with other accused has been released pursuant to the report made by the Police under Section 169 of the Criminal Procedure Code. The learned Counsel, therefore, submitted that in view of the order of the Judicial Magistrate, First Class, Tasgaon, there is no justification for continuing the Petitioner under suspension. The learned Counsel also made a grievance that the subsistence allowance has not been paid to the Petitioner right from the date of suspension i.e. 24th January, 2004.

6. Mr.Bandiwadekar drew our attention to the decision of this Court in **Madhukar Namdeo Patil vs. Chairman, Sudhagad Education Society**, 2000(4) Mh.L.J. 206, where the Division Bench of this Court, to which one of us (A.P.Shah, J.) was a party, held as under:

"Held, that sub-rule (5) of Rule 33 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 stipulates that the employee in such a case shall be considered as under suspension for any period during which he is under preventive detention or where he is detained in police or judicial custody for a period exceeding forty-eight hours or is undergoing imprisonment. Where the employee is in police or judicial custody, he shall be considered as under suspension when the period of custody exceeds 48 hours. Moreover, the suspension can only be for the period during which the employee is in police or judicial custody and only if the period of such custody exceeds 48 hours. The period of suspension under the provisions of sub-rule (5) of Rule 33 must necessarily come to an end once the period of judicial or police custody is terminated. Suspension under Rule 33(5) is not an indefinite suspension during the pendency of a criminal prosecution. That was not the intention underlying the framing of Rule 33(5) and the words used in the said rule militate against an interpretation which extends the period of

suspension to the pendency of the criminal proceedings. The period of suspension under Rule 33(5) comes to an end once an employee ceases to be in police or judicial custody. It is clear beyond doubt that suspension of the employee under Rule 33(5) where the employee has been detained in police or judicial custody cannot exceed the duration of the detention of the employee in such custody. The order of suspension dated 5-11-1999 was clearly contrary to the provisions of Rule 33(5). The order proceeds on the footing that the employee is suspended under Rule 33(5) because he was in judicial custody for a period of six days between 28-10-1999 and 2-11-1999. The suspension of the employee after the period of judicial custody came to an end would be clearly contrary to the express provisions of Rule 33(5) which restrict the operation of suspension to the period during which the employee was in judicial custody. The rule does not contemplate automatic suspension pending criminal proceedings. Permission to suspend the employee was given on 6-11-1999 by the Education Officer but that was only for the action taken by the 1st Respondent. The sanction

that was accorded was in respect of the action which was taken by the 1st Respondent, that action being the order of suspension under Rule 33(5). The period of suspension under Rule 33(5) cannot be longer than the period during which the employee was in judicial or police custody. The sanction accorded by the Education Officer cannot validate the action which was taken under Rule 33(5) for a period beyond that which is stipulated in the said sub-rule."

7. In the light of the Division Bench decision, it is clear that the suspension of the Petitioner beyond 15th December, 2003 was clearly not justified and is contrary to the provisions of Rule 33(5) of the M.E.P.S. (Conditions of Service) Rules. Mr. Sakhare, the learned Counsel appearing for the Respondent Nos.3 and 4, however, submitted that a charge sheet has been issued to the Petitioner and therefore the Petitioner’s suspension may be continued under Rule 33(1). We have gone through the charge sheet which seems to be mainly based on the arrest of the Petitioner. In our opinion, this is not a fit case to continue the Petitioner on suspension, especially, when he has been exonerated by the Police.

8. We, therefore, quash and set aside the order of suspension of the Petitioner dated 24th January, 2004 and direct the Respondent Nos.3 and 4 to reinstate the Petitioner in service with effect from 1st October, 2004. However, the Petitioner shall not be entitled to any backwages at this stage but shall be entitled to claim backwages in case he is exonerated by the Inquiry Officer. The Respondent Nos.3 and 4 are directed to pay to the Petitioner the subsistence allowance from the date of suspension till 30th September, 2004 within eight weeks from today. The Management is free to proceed with the inquiry against the Petitioner and take appropriate decision in accordance with the Maharashtra Employees of Private Schools (Conditions of Service) Rules. All contentions on merits are left open to the parties. Rule is made absolute accordingly. However, there shall be no order as to costs.

9. Issuance of certified copy expedited.

Sd/-

(A. P. SHAH, J.)

Sd/-

(S. U. KAMDAR, J.)